

Localism Act 2011– Summary of the Planning Implications

A Briefing Note for Town and Parish Councils

Introduction

The Localism Bill was introduced to the House of Commons on 13 December 2010. It set out a series of proposals aiming to shift power away from central government. The Bill has now completed its passage through Parliament and was granted Royal Assent on 16 November 2011 to become the Localism Act 2011.

This paper provides an overview of the main elements of Part 6 of the Act that covers Planning issues. Part 6 includes the following chapters:

- Chapter 1 – Plans and Strategies
- Chapter 2 – Community Infrastructure Levy
- Chapter 3 – Neighbourhood Planning
- Chapter 4 – Consultation
- Chapter 5 – Enforcement
- Chapter 6 – Nationally Significant Infrastructure Projects
- Chapter 7 – Other Planning Matters

Some provisions of the Act are already in force. The Government will issue regular updates on likely start dates and public consultations on other parts of the Act.

The following provisions are now in force but may be subject to orders of the Secretary of State to make them effective:

- Selected sections addressing regional strategies– the abolition of regional strategies is not immediate. The Act requires a commencement order to be made by the Secretary of State before regional strategies can be revoked.
- Section 110 (in force from 16 November 2011) – Duty of Councils to co-operate.
- Section 111 to 113 (in force from 16 January 2012) – Local Development Schemes, the adoption and withdrawal of Development Plan Documents and local development monitoring reports.

- Section 114 (in force 17 November 2011) – Community Infrastructure Levy – amendment to provisions regarding approval of charging schedules.
- Sections 116 to 121 (in force 16 November 2011) – Neighbourhood planning matters including financial assistance for neighbourhood planning.. The neighbourhood planning regulations¹ came into force on the 6 April 2012. These provide detail in relation to the process for preparing a Neighbourhood Development Plan or Order.
- Section 122 (in force 16 November 2011) – Requirement to carry out pre-application consultation. More detail in terms of the threshold for pre-application consultation will be added by formal secondary legislation.
- Section 123 to 127 (in force 6 April 2012) - New planning enforcement powers came into force on the 6 April 2012.
- Section 143 (in force 16 January 2012) – Local finance considerations as material when dealing with planning applications.

¹ Statutory Instrument No.637: The Neighbourhood Planning (General) Regulations 2012:
http://www.legislation.gov.uk/uksi/2012/637/pdfs/uksi_20120637_en.pdf

Chapter 1 – Plans and Strategies

1. Regional Spatial Strategies

The Act sets out the Government’s intention to abolish Regional Spatial Strategies (RSS). The RSS for Yorkshire and the Humber was completed in May 2008 and establishes the Government’s planning policies in relation to the development and use of land in the region. It determines (amongst other things) the scale and distribution of housing and economic development for each local planning authority.

The abolition of regional strategies is not immediate. The Act requires a commencement order to be made by the Secretary of State. Orders can be laid into Parliament to revoke regional strategies once the findings of a consultation², forming part of the Strategic Environmental Assessment on the abolition of regional strategies, are considered by the Secretary of State and Parliament. The 12 week consultation period closed January 2012.

Under provisions in the Act the Secretary of State’s directions preserving Structure Plan policies will be revoked. This would imply that policies in the Joint Structure Plan for Hull and the East Riding (adopted 2005) would cease to have effect.

The saved policies in the adopted Local Plans (Beverley, Boothferry, East Yorkshire and Holderness) would remain in use until replaced by new policies in the emerging East Riding Local Plan (formerly known as the Local Development Framework, or LDF). The Local Plan is the ‘portfolio’ of documents that together provide the framework for managing development and addressing key planning issues.

2. Local Plan Matters

The Act proposes to retain the Local Plan process (subject to a number of changes) as the key element of the new planning system. The following changes are proposed, these are now in force:

i. Duty to co-operate

The Act places a statutory duty on local planning authorities to co-operate with other local planning authorities and relevant identified bodies to maximise the effectiveness with which activities concerned with the preparation of Local Plan documents are undertaken. Local planning authorities may, for example, consider adopting a joint approach to the preparation of Local Plan documents. Joint working may also relate to strategic matters, defined in the Act as “sustainable development or use of land that has or would have a significant impact on at least two planning areas”. Strategic matters include the development or use of land in connection with strategic infrastructure impacting on at least two planning areas.

² Environmental report on the revocation of the Yorkshire and Humber Plan, Department for Communities and Local Government, published October 2011:
<http://www.communities.gov.uk/publications/planningandbuilding/revocationyhrss>

ii. Local Development Schemes (LDS)

The Local Development Scheme is a document that each local planning authority prepares to set the timetable, content and project management arrangements for the Local Plan. The Act states that local planning authorities will still need to prepare a Local Development Scheme (for example, in the interests of accountability and transparency) but the Scheme no longer needs to be agreed by the Secretary of State. The local planning authority must keep up to date information showing how they have complied with the timetable.

iii. Examination of Local Plan Documents

Most Local Plan documents are currently required to be independently scrutinised at an examination by a planning inspector. They have to be judged “sound” before they can be adopted.

The Act retains the examination process and documents will still need to be judged “sound” by the inspector before the local planning authority can adopt them. However, the Act removes the right of the inspector to change (re-write) plans during the examination. Local planning authorities will also be able to suggest changes during the examination to make a plan sound. The Act also allows local planning authorities to withdraw plans before their adoption without seeking clearance from central government.

iv. Local Development: monitoring reports

Local planning authorities currently submit an annual monitoring report to the Secretary of State to set out whether the Local Plan timetable has been achieved and whether planning policies are being met.

The Act retains the duty on local planning authorities to prepare progress reports but the authority is now able to choose the time period that the report would cover (subject to regulations). The report no longer needs to be submitted to the Secretary of State. The local planning authority is required to publish information direct to the public at least annually.

Chapter 2 - Community Infrastructure Levy

The option for local planning authorities to introduce a Community Infrastructure Levy (CIL) came into force on 6 April 2010. It is a tariff-based approach that allows local planning authorities to raise funds from developers and can be spent on a wide range of infrastructure that is needed as a result of development. This includes transport schemes, flood defences, schools, health and social care facilities, parks, green spaces and leisure centres. The levy's rate must be set in a 'charging schedule' that will be based on an assessment of infrastructure needs in the Local Plan. The charging schedule will be subject to consultation and independent examination. The introduction of CIL was also accompanied by regulations restricting the use of planning obligations (known as Section 106 agreements) and the pooling of contributions for infrastructure capable of being funded by the levy.

The Act retains CIL but with a number of changes, principally in the procedure for the approval of the charging schedule. The role of the examiner will be to ensure that the local planning authority has complied with the statutory requirements. Provisions regarding the approval of charging schedules are now in place. Key changes include³:

- 1) Requiring a meaningful proportion of levy revenue raised in each neighbourhood to be passed back to the neighbourhood.
- 2) Funds will be able to be spent on ongoing operational and maintenance costs, the initial cost of providing new infrastructure and anything else that is concerned with addressing demands that development places on an area.
- 3) Payment arrangements are to be 'freed up'. This will allow local planning authorities to decide their own levy payment deadlines and whether to offer the option of paying by installments.
- 4) Local planning authorities will gain greater flexibility when deciding upon a reasonable charging level. The charging schedule will still be subject to independent examination to ensure that local planning authorities do not set unreasonable levies, but local planning authorities will have more flexibility in correcting changes that the examiner considers unreasonable. When setting rates for CIL, local planning authorities should also consider sources of funding for anything other than infrastructure concerned with addressing the demands which development places on an area.
- 5) Local planning authorities may be required to pass CIL on to other bodies (subject to conditions such as it being used to fund infrastructure in support of development within the area). For development of land in an "uncovered area" (an area to which the duty to pass CIL to other bodies does not relate) local planning authorities may apply CIL to support development of the uncovered area, or any part of that area, by

³ The Community Infrastructure Levy An Overview, Department for Communities and Local Government, published May 2011:
<http://www.communities.gov.uk/publications/planningandbuilding/communityinfrastructurelevymay11>

funding anything else that is concerned with addressing the demands that development places on an area.

Arrangements for the scaling back of Section 106 agreements are retained. This means that planning obligations can continue to be used to mitigate the direct impacts of specific developments and to fund affordable housing; however their use to collect standardised tariff-style contributions will be phased out in favour of CIL by 2014.

Chapter 3 - Neighbourhood Planning

The Act makes new provisions for neighbourhood planning which are now in force. A consultation on the draft neighbourhood planning regulations sought views on whether the proposed regulations were fit for purpose⁴. The final neighbourhood planning regulations provide more detail in terms of how neighborhood planning will operate in practice. Local planning authorities have been invited to apply for grants under the Neighbourhood Planning Front Runners Scheme. Grants will be used to help local planning authorities understand how neighbourhood planning would be likely to work in practice. Over 200 neighbourhood front runners have been identified to date⁵. Front runners have been working up plans and testing out the principles of neighbourhood planning.

The neighbourhood planning function will be additional to – and not a replacement for – the existing Local Plan system.

i. Qualifying bodies

Only a “qualifying body” can make an application to the local planning authority requesting a specified area to be designated as a “neighbourhood area”. The application would make a request to define an area for the purposes of neighbourhood planning. In parished areas such as the East Riding, a “qualifying body” would be a town or parish council.

ii. Neighbourhood areas

It is expected that in considering an application the parish area will be followed (although an area could comprise more than one parish provided all the relevant parish councils consent). A local planning authority will need to have clear reasons relating to the planning of its area if it does not follow parish boundaries in approving neighbourhood areas. The local planning authority will have a role in mediating and consulting where a conflict over boundaries exists. The power to designate an area as a neighbourhood area is exercisable by two or more local planning authorities if the area falls within the areas of those authorities.

The local planning authority must also consider whether to designate the neighbourhood area as a “business area” (an area wholly or predominantly business in nature).

The Act introduces the concept of Neighbourhood Development Orders and Neighbourhood Development Plans. Both have similar procedures.

⁴ Neighbourhood Planning Regulations: Consultation, Department for Communities and Local Government, published October 2011:

<http://www.communities.gov.uk/publications/planningandbuilding/planningregulationsconsultation>

⁵ Current Neighbourhood Planning Front Runners, Department for Communities and Local Government, published November 2011:

<http://www.communities.gov.uk/planningandbuilding/planningsystem/neighbourhoodplanningvanguards>

Press Notice and a link to the most recent 108 ‘frontrunner’ communities announced March 2012. Department for Communities and Local Government:

<http://www.communities.gov.uk/news/newsroom/2099384>

ii. Neighbourhood Development Order

A Neighbourhood Development Order would enable planning permission to be granted (in full or subject to conditions and limitations) for specified development and/or any use class (e.g. shops, business, dwelling houses) in a particular neighbourhood area without the need for a planning application. Certain types of development would be excluded from an Order including county matters, waste development, certain public and private projects on the environment and nationally significant infrastructure.

A **Community Right to Build Order** is a particular type of Neighbourhood Development Order giving communities the right to bring forward development without the need to apply for planning permission in certain circumstances where the benefit, or receipts, from the development are retained for the benefit of the community.

In the East Riding a Community Right to Build Order can be prepared by a community organisation or a town or parish council. A community organisation would be established as a corporate body for the express purpose of furthering the economic, social and environmental well-being of individuals living or wanting to live in an area.

A local planning authority has the right to decline to consider a Right to Build proposal if they consider it is likely to have significant effects on the environment. Proposals will be subject to a local referendum where a majority of people who vote will need to support the proposal. Communities will be expected to identify sites, sources of finance and secure support.

iii. Neighbourhood Development Plan

A Neighbourhood Development Plan could be prepared to set out policies in relation to the development and use of land in a particular neighbourhood area. The Communities and Local Government publication 'Supporting Communities and Neighbourhoods in Planning Prospectus', published in January 2011, identifies that the Neighbourhood Development Plan could include generic or specific policies against which planning applications would be judged. These policies may augment/refine or add to the policies in the emerging East Riding Local Plan (please note that they will need to be in conformity with policies in the adopted Local Plan).

They could cover:

- Planning objectives for the neighbourhood.
- The broad planning context, local facilities and services.
- Key neighbourhood projects and infrastructure priorities.
- Development management policies on housing, economic development and environment.
- Site specific policies on housing, economic development, environmental issues.
- Changes in the coverage of some planning designations.

The process for preparing a Neighbourhood Development Order or Plan

The process for preparing Neighbourhood Development Orders or Plans is broadly as follows⁶.

A detailed briefing note provided to town and parish councils on the process for preparing a Neighbourhood Development Plan or Order is available from the East Riding of Yorkshire Council Website:

<http://www2.eastriding.gov.uk/environment/planning-and-building-control/future-strategic-plans/neighbourhood-planning/>

- Once the neighbourhood area has been defined and agreed by the local planning authority, the parish council (or group of parish councils) will be free to bring forward proposals for Neighbourhood Development Plans and Orders. Only one Neighbourhood Development Plan may be made for each neighbourhood area.
- Local planning authorities would have a duty to support town and parish councils in the development of their Plans or Orders. Plans and Orders will need to conform to legal requirements (such as sustainability appraisal) and will also need to conform to national planning policy and be aligned with neighbouring plans and the strategic elements of the council's adopted Local Plan. Support from the local planning authority might therefore include the provision of advice or assistance on good practice in plan-making such as the evidence that might be required to prepare a Plan. There would be no duty on the local planning authority to provide financial assistance at this stage.
- The town or parish council would be required to meet public consultation requirements before submitting a proposal to the local planning authority, for example, producing a consultation statement detailing who has been consulted, the main issues raised and how any issues and concerns have been considered and where relevant, addressed by the proposal.
- The town or parish council would submit their Plan or Order to the local planning authority. If the proposed Plan or Order was compliant with legislative requirements and all the required information had been submitted to the local planning authority, the local planning authority would submit the proposal, alongside written representations, to an independent examination by a qualified assessor. The examination could be held by written representations or could comprise a more formal public inquiry. The examination would lead to a report which would be given to the parish council promoting the Plan or Order and the local planning authority. The report would not be binding except in the case of Community Right to Build Orders.

⁶ Supporting Communities and Neighbourhoods in Planning Prospectus, Department for Communities and Local Government, published January 2011 supplemented with further detail where relevant: <http://www.communities.gov.uk/archived/publications/planningandbuilding/neighbourhoodsprospectus>

- Following the independent examination (and following any modifications), as long as the draft Plan or Order meets the requirements above (i.e. conformity to national policy, EU law and the strategic elements of the adopted Local Plan), the local authority concerned would make arrangements for a local referendum to be held to decide whether the draft Plan or Order should be brought into force.
- Where the draft Plan or Order receives the support of more than half of those voting at the referendum the local planning authority would be required to bring the Plan or Order into effect. This would mean the Neighbourhood Development Plan would form part of the Development Plan for the East Riding and be used by officers at the council to make decisions on planning applications.
- An additional referendum must be held on the making of a Neighbourhood Development Order if the draft Order relates to a Neighbourhood Area that has been designated as a “business area”. Where there are two applicable referendums and in one of those referendums (but not the other) more than half of those voting have voted in favour of the Order, the local planning authority may (but need not) make a Neighbourhood Development Order to which the proposal relates.

The Impact Assessment accompanying the Bill⁷ anticipates that the average cost of preparing a Plan or Order will be between £17,000 - £63,000 although it identifies that some may cost as much as £200,000. There will also be ongoing costs in terms of reviewing the Plan or Order, expected to be 70% of the original cost. It is expected that Plans or Orders will be reviewed every 10 years.

The cost to community groups of bringing forward a Community Right to Build scheme is estimated at £40,000.

⁷ Localism Bill: neighbourhood plans and community right to build, Impact Assessment, Department for Communities and Local Government, published January 2011:
<http://www.communities.gov.uk/publications/localgovernment/localismneighbourhoodplans>

Chapter 4 – Consultation

The Act introduces new requirements on applicants for certain types of development (within a centrally determined threshold) to undertake **pre-application consultation** with local communities. The applicant must publicise the proposed application, contact the persons wishing to “comment on or collaborate with” them on the design of the proposal and “have regard to any responses to the consultation”.

The Impact Assessment which accompanied the Bill⁸ stated that the requirement for pre-application consultation would apply only to very large scale major applications. These are applications covering more than 200 residential units (or 4 hectares if the number of units is not given in the application) and for all other uses (e.g. retail, employment) for 10,000 square metres of floor-space (or 2 hectares or more). Therefore, only the most strategic applications would be covered by the measure.

The development threshold above which this requirement will apply will be formally specified by secondary legislation later this year.

Chapter 5 – Enforcement

Various new planning **enforcement** powers are outlined in the Act and are now in force including:

- the power to decline to determine retrospective applications in relation to land where an enforcement notice is in force.
- an application may be made to a magistrates court within 6 months of the planning breach coming to the attention of the LPA.
- increases in the level of fines.
- the provision of assurance as regards prosecution for a person served with a notice
- new powers on the removal of structures for unauthorised displays; remedying persistent problems with unauthorised advertisements; rights of appeal, and
- the defacement of property and statutory undertakers property.

Chapter 6 - The Infrastructure Planning Commission

The Infrastructure Planning Commission is the independent body that examines applications for nationally significant infrastructure projects. These are the large projects that support the economy and vital public services, including railways, large wind farms, power stations, reservoirs, harbours, airports and sewage treatment works. It was established in 2009.

The Act makes provisions to abolish the IPC and transfer its powers to the Secretary of State. A major infrastructure planning unit is to be established within the Planning Inspectorate to consider such proposals. The Act states that National Policy Statements are

⁸ Localism Bill: compulsory pre-application consultations between prospective developers and local communities, Impact Assessment, Department for Communities and Local Government, published January 2011: <http://www.communities.gov.uk/publications/localgovernment/localismpreapplications>

to be approved by Parliament (to ensure the strongest possible democratic legitimacy and minimise the risk of a successful judicial review).

An impact assessment examining the impact of abolishing the IPC was undertaken in January 2012⁹.

Chapter 7 - Other planning matters

When determining planning applications, local authorities must now have regard to the provision of local finance in addition to the provisions of the development plan (so far as material to the application). Local finance considerations **are defined as a grant or other financial assistance provided by the government or a sum that a relevant authority may receive in payment of CIL.**

Further information

Stephen Hunt
Housing and Spatial Strategy Manager
Tel: (01482) 391740
E-mail: stephen.hunt@eastriding.gov.uk

Jessica Lee
Planning Officer
Tel: (01482) 391738
E-mail: jessica.lee@eastriding.gov.uk

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⁹ Localism Bill: Major Infrastructure Projects, Impact Assessment, Department for Communities and Local Government, published January 2011:
<http://www.communities.gov.uk/publications/localgovernment/localisminfrastructureprojects>